IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 184 OF 1993

Bhanumati Damodar Sutaria ..Petitioner

versus

Jasodabai w/o. Parasram
Chawla & Ors. ..Respondents

Ms. P. Tatake for the Petitioner.

None for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 22ND SEPTEMBER, 2006

ORAL ORDER :

1. Heard Advocate for the Petitioner. Nobody is present for the Respondents.

2. Petitioner is a tenant of a residential premises i.e. her claim. The Respondent Nos.1 and 2 filed a Regular Civil Suit No. 281 of 1982 before the 3rd Joint Civil Judge, Junior Division, Nasik, against Respondent No.3, who was Defendant No.1 and the petitioner, who was the Defendant No.2. This suit was for recovery of the rent and possession on the ground of non payment of rent only. This suit

was resisted by contesting defendants. Defendant No.1 contended that he was not the tenant and Defendant No. 2 was the tenant.

3. When suit of the plaintiff was pending, defendant No.2 claiming to be the real tenant filed application for fixation of fair rent before the same court. The suit of the plaintiff and the application for fixation of fair rent came to be decided simultaneously by common order by 3rd Joint Civil Judge, Junior Division, Nasik, by judgment dated 11.10.1985. The claim of the Plaintiff was for getting vacant possession of the suit premises from both the defendants was dismissed. Defendant No.2 was declared as a tenant and the suit of the plaintiff for recovery of the rent was allowed at Rs.55/- per month from September, 1980 onwards. The Defendant No. 2 was allowed to adjust the rent which was already decided by him in the court from time to time in Misc. Application No. 236 of 1980. Against this judgment, landlord - plaintiffs filed Civil Appeal No. 477 of 1986 before the 2nd Additional District Judge, Nasik. The Appellate Court on the basis of one solitary receipt came to the conclusion that the real tenant was Defendant

No.1 and not the Defendant No.2, and, therefore, the decree of the trial court was set aside and both the defendants were directed to deliver vacant possession to the Plaintiff. The standard rent application of the original defendant No. 2 - present petitioner was dismissed and order of fixation of rent was set aside. It is against this judgment and decree of the appellate court that the present writ petition is filed.

4. Advocate for the Petitioner contended that the petitioner is a lady, she was in need of residential premises in Nashik. She was employed by the original defendant No.1, therefore, when she learnt that the premises of the plaintiff were vacant, she sought intervention of the defendant No.1. Original landlord wanted some assurance and it was decided that Defendant No. 1 to remain guarantor for payment of rent. She also contended that and this fact is admitted by the original landlord in evidence that the defendant No.1 was a rich person and influenced person, the suit premises were nothing but a garage of two rooms, which was converted into residential premises to facilitate the present petitioner - defendant No.1 to reside

there. The original defendant No.1 had a very luxurious bungalow in his name which he was occupying in Nashik. It was having five rooms and all luxuries, whereas the suit premises were 13.16 sq. meters only. Therefore, according to the petitioner, defendant No.1 never required any premises. He did not stay in the premises and it was she who was the tenant.

5. In this background of the matter, Advocate for the petitioner - original Defendant No.2 contended that the judgment of the appellate court being passed only on one receipt of payment of rent, upon which there is a counter signature on the reverse side of the Defendant No.1 should not have been treated by the Appellate court as a conclusive proof of the agreement of tenancy between the landlord and the defendant No.1. She contended all the circumstances referred to above, were strong enough and sufficient enough to dispel the evidentiary value of the said receipt. She further contended that her defence was consistent with the facts and circumstances being a lady and unknown to the landlord, it was the intervention of the defendant No.1 that helped her in getting the

tenancy premises.

6. My attention was drawn by the Advocate for the Petitioner to the judgment of the trial court where all the aspects have been considered in the proper perspective. Plaintiff No.2 in his cross-examination admitted that the defendant No.1 is having his bungalow, which was known as 'Bomi Villa' situate at Deolali Camp. The said bungalow consisted of five rooms, kitchen with garden surrounding by the sides of the bungalow. The Court yard is also in big size in the said bungalow. Defendant No. 1 was residing with his sister, mother and father. The living standard of defendant No.1 was too high in the society as per admission of the plaintiff. Further, Defendant No.1 entered the witness box before the trial court and fully supported the claim and contention of the present Defendant No.2.

7. It appears that all these important aspects of the matter were lost site of by the trial court and consequently the appellate court came to a wrong conclusion. The premises were let out by the plaintiff in March 1973. The suit of the plaintiff

came to be filed in 1982 i.e. after 9 years and it is difficult to believe that if the premises were given really to the defendant No.1 a very rich and influential persons, he would not have paid the paltry amount of Rs.55/-. Similarly, the plaintiff would not have permitted the Defendant No.2 to reside in the premises without payment of rent.

8. The name of the defendant No.1 is Framroz Manekji Netarwala, whereas the name of the defendant No.2 is Bhanumati Damodar. There is absolutely no connection between the two persons. If the defendant No.1 was the tenant, there is no explanation how the defendant No.2 was concerned in the suit premises, and, therefore in this background of the matter, explanation given by the defendant No.2 that she was the tenant but because the landlord wanted some assurance regarding payment of rent, she introduced defendant No.1 or defendant No.1 agreed to support her and stand as guarantor.

9. Therefore, considering all these aspects of the matter, this petition is required to be allowed. Hence, the Petition is allowed. Rule is discharged. Impugned judgment and decree of the Appellate Court

dated 23.11.1992 in Appeal No. 477 of 1986 is set aside and the order of the trial court dated 11.10.1985 is upheld. Since nobody is present for the respondents, no order as to costs.

(D.G. DESHPANDE, J.)